JEAN E. WILLIAMS
Deputy Assistant Attorney General
DEVON LEHMAN McCUNE, Trial Attorney
Colorado Bar No. 33223
United States Department of Justice
Environment and Natural Resources Division
999 18th Street, South Terrace, Suite 370
Denver, Colorado 80202
Tel: (303) 844-1487/Fax: (303) 844-1350
Email: Devon.McCune@usdoj.gov

Attorneys for Federal Defendants

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

SWVP-GTIS MR LLC, Plaintiff, v. David Bernhardt, Secretary of the United States Department of the Interior; Darryl LaCounte, Acting Director of the United States Bureau of Indian Affairs. Defendants.	No. CV 19-4571-JAT **MOTION TO DISMISS AND SUPPORTING MEMORANDUM**

I. INTRODUCTION

Defendants David Bernhardt in his official capacity as Secretary of the United States Department of the Interior, and Darryl LaCounte in his official capacity as Acting Director of the United States Bureau of Indian Affairs ("BIA") (collectively, "Federal Defendants"), hereby move the Court to dismiss Plaintiff's Amended Complaint (ECF No. 12). This Court lacks jurisdiction over the case because Plaintiff's claims fail to allege final agency action under the Administrative Procedure Act ("APA"). In addition, Plaintiff lacks standing.

Plaintiff argues that Federal Defendants permitted the installation of a new high-volume irrigation well by Florence Copper Inc. ("Florence Copper") in exchange for two

wells operated by the San Carlos Irrigation Project (Project), and failed to conduct allegedly required environmental review to assess the impacts of this decision. Am. Compl. ¶¶ 3, 4. But Federal Defendants did not authorize the well or approve its installation. Florence Copper installed the well on its own property, outside the lands served by the Project ("Project Lands"). Federal Defendants do not own or operate the well. Federal Defendants also have not made a final decision to exchange the water produced by Florence Copper's high-volume well for water produced by any wells operated by the Project for the purpose of providing groundwater to Project Lands ("Project Wells"). The Project continues to operate at least one of the wells that Plaintiff alleges it stopped using in exchange for the new well. Because Federal Defendants have not made the decision Plaintiff alleges, Plaintiff fails to challenge final agency action and the Court accordingly lacks jurisdiction. Nor has Plaintiff alleged a discrete agency action that Federal Defendants are required to take.

In addition, Plaintiff lacks standing because it has not been injured, its alleged injury is traceable to the actions of a third party, not Federal Defendants, and this Court cannot remedy Plaintiff's alleged injury as Florence Copper is not a party to this case.

As explained in more detail below, this Court should dismiss the claims in Plaintiff's Amended Complaint.

II. FACTUAL BACKGROUND

A. History of the San Carlos Irrigation Project.

Congress authorized the construction of the Coolidge Dam across the Gila River in Arizona in 1924 as part of the Project to provide irrigation to the Pima Indian Reservation,[1] as well as to the public and private lands in the area without diminishing the water supply for Indian lands. *See* Act of June 7, 1924, ch. 288, § 1, 43 Stat. 475 ("1924 Act"). "The Coolidge Dam was built near the confluence of the San Carlos and Gila Rivers, approximately 90 miles southeast of Phoenix, Arizona." *Id.* The dam

[1] The Pima Indian Reservation is now called the Gila River Indian Reservation.

created a reservoir sufficient to irrigate eighty percent of Project Lands, with the balance receiving water from other sources, mainly pumped ground water.

Under the 1924 Act, the government entered into a "Repayment Contract" (the "Contract") with the, a district embracing both the publicly-owned and privately-owned lands. 1924 Act § 4. The water flows from the Reservoir at Coolidge Dam down the Gila River for 68 miles and is diverted to a canal, where the Project delivers water to the Gila River Indian Community and the Irrigation District through a series of canals. The off-reservation irrigators initially were to repay roughly half the Project's construction debt, based on their share of the total acreage, over twenty years, although later legislation essentially forgave this debt. *See* 59 Stat. 469 (1945). The 1924 Act also required off-reservation irrigators to pay a proportionate share of annual operation and maintenance expenses, to be paid annually in advance. 1924 Act § 3.

A 1928 Act authorized the Secretary of the Interior ("Secretary"), following execution of the Contract, to construct a hydroelectric power plant at the Dam. *See* Act of June 30, 1928, ch. 138, 45 Stat. 200, 210–11 ("1928 Act"). In 1931, the Irrigation District entered into the Contract with the Secretary, which stated that the Secretary was required to distribute both pumped and stored water "as equitably as physical conditions permit." *San Carlos Irr. & Drainage Dist. v. United States*, 111 F.3d 1557, 1560 (Fed. Cir. 1997).

B. Facts as alleged in the Amended Complaint

As asserted in the Amended Complaint, Florence Copper is a mining company that owns approximately 1,182 acres in Florence. Am. Compl. ¶ 31. In 2010, Florence Copper "obtained an assignment of a mineral lease for 160 acres of state trust land, which is wholly surrounded by Florence Copper's private land holdings." *Id.* Plaintiff asserts that in December 2018, Florence Copper began operating an in-situ leach copper mining pilot test facility on the state-lease parcel to determine if in-situ leach copper mining can be performed at the site without contaminating the drinking water aquifer. *Id.* ¶ 32. If

successful, Florence Copper intends to develop a commercial copper mine on its leased and private land using the same in-situ leach mining process. *Id.*

According to the Amended Complaint, in the in-situ leach process, "injection wells pump a sulfuric acid mining solution into the copper-bearing bedrock (the 'Oxide Zone') to dissolve the copper. The copper-bearing solution, along with native groundwater, is pumped back to the surface through recovery wells." *Id.* ¶ 34. The company can then extract the copper from the solution for commercial sale. *Id.* Plaintiff asserts that "[t]he acid solution also dissolves native minerals and heavy metals in the aquifer, altering groundwater chemistry and increasing concentrations of many regulated and toxic contaminants (including arsenic, uranium, lead, and mercury, among many others) in the aquifer." *Id.* ¶ 35.

Plaintiff SWVP is a real estate development company that owns 4,376 acres of land in and around the Town of Florence, Arizona, "in close proximity and adjacent to Florence Copper's property, and including land located within the . . . Project." *Id.* ¶ 16. It is concerned that the Florence Copper's "mining will inject contaminants into the aquifer and free additional contaminants from the bedrock portion of the aquifer," and may contaminate the local groundwater supply. *Id.*¶ 38. Plaintiff asserts that "[t]he construction and operation of a high-volume irrigation well so close to the pilot test facility and commercial mining operations could impact control of groundwater contaminants at the mine site." *Id.* ¶ 54.

Plaintiff asserts that "regulatory agencies" required certain core holes and wells located within five-hundred feet of the pilot test well field to be sealed and abandoned before mining operations began in order to prevent acid mining solutions from flowing away from the mine area and contaminating the aquifer. *Id.* ¶¶ 44, 45. According to the Amended Complaint, two Project Wells, Wells 9 and 10-B, are located within the five-hundred-foot radius and were required to be abandoned before pilot test operations began. *Id.* ¶ 46.

Plaintiff asserts that BIA agreed to stop using Project Wells 9 and 10-B, and that Florence Copper would replace the water produced by these two wells with the water produced by a new single high-volume irrigation well that Florence Copper agreed to install and operate. *Id.* ¶ 48. The Amended Complaint states that the "BIA did not execute any formal agreement regarding the well replacement decision and did not conduct any sort of administrative or regulatory approval or permit process with regard to the decision." *Id.* ¶ 51. Plaintiff asserts that Florence Copper has drilled a new high-volume irrigation well in the southwest corner of its property, within a few thousand feet of the pilot test facility, that is proposed to pump 1,200 gallons per minute and is now operational. *Id.* ¶¶ 52, 53.

Plaintiff raises two claims, one for violation of the National Environmental Policy Act ("NEPA")[2] and one for violation of the APA. For Plaintiff's NEPA claim, it asserts that BIA's decision to allow construction and operation of the high-volume irrigation well on SCIP property near an operational copper mine test facility and near where a proposed major new copper mine will be located is a major Federal action significantly affecting the quality of the human environment. *Id.* ¶ 61. According to Plaintiff, BIA was required to prepare NEPA documentation in connection with their decision, but failed to do so. *Id.* ¶¶ 62–65. Plaintiff's APA claim asserts that the BIA failed to explain its decision and to consider relevant factors. *Id.* ¶¶ 70–72.

III. STANDARD OF REVIEW

Federal court jurisdiction is limited, present only when authorized by statute or the Constitution. *See Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994). Once challenged, the burden of establishing a federal court's subject matter jurisdiction rests on

---

[2] "NEPA requires federal agencies . . . to assess the environmental impact of proposed actions that 'significantly affect[ ] the quality of the human environment.'" *WildEarth Guardians v. Provencio*, 923 F.3d 655, 668 (9th Cir. 2019) (quoting 42 U.S.C. § 4332(C)). Compliance with NEPA is reviewed under the APA. *Ctr. for Biological Diversity v. Ilano*, 928 F.3d 774, 779 (9th Cir. 2019) (citing *Grand Canyon Tr. v. U.S. Bureau of Reclamation*, 691 F.3d 1008, 1016 (9th Cir. 2012)).

the party asserting jurisdiction. *Id.* When deciding a motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1), a district court may consider evidence outside of the complaint without converting the motion to dismiss into a motion for summary judgment. *See McCarthy v. United States*, 850 F.2d 558, 560 (9th Cir. 1988).

IV. ARGUMENT

This case is not properly before the Court. Plaintiff has failed to identify a final agency action sufficient to waive the United States' sovereign immunity or provide jurisdiction under the APA, 5 U.S.C. §§ 551–559. Similarly, Plaintiff lacks standing. Florence Copper constructed the new well, and began to operate it, not the Federal Defendants. Any action taken in this matter has been taken by a third party not before this Court. For this reason, the Court cannot grant Plaintiff effective relief.

A. This Court lacks jurisdiction because Plaintiff has not identified final agency action under the APA.

Although 28 U.S.C. § 1331 confers federal question jurisdiction, "the United States, as sovereign, is immune from suit save as it consents to be sued, and the terms of its consent to be sued in any court define that court's jurisdiction to entertain the suit." *United States v. Mitchell*, 445 U.S. 535, 538 (1980)) (citation omitted). Moreover, "[a] waiver of sovereign immunity 'cannot be implied but must be unequivocally expressed.'" *Id.* (quoting *United States v. King*, 395 U.S. 1, 4 (1969)). Plaintiff must identify a valid waiver of sovereign immunity, as district court jurisdiction cannot be based on § 1331 unless some other statute waives sovereign immunity. *Mitchell*, 445 U.S. at 538. While Plaintiff does not explicitly allege a waiver of sovereign immunity, the only viable waiver based on its allegations is the APA.[3] *See* Am. Compl. ¶¶ 9–10.

---

[3] The APA was enacted to provide a uniform vehicle for courts to review all types of challenges to agency action, including constitutional claims. *See Dickinson v. Zurko*, 527 U.S. 150, 155 (1999); 5 U.S.C. 706(2)(B) (allowing courts to set aside agency action that is "contrary to constitutional right, power, privilege, or immunity"). "NEPA claims must be brought under the APA, and must fall within the APA's limited waiver of sovereign immunity." *Cent. Delta Water Agency v. U.S. Fish & Wildlife Serv.*, 653 F. Supp. 2d

Section 702 of the APA contains a limited waiver of sovereign immunity: "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." 5 U.S.C. § 702. An agency action is "the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. § 551(13). Section 704 imposes limitations on which agency actions are subject to judicial review. It provides that agency actions are subject to judicial review only when agency action is "made reviewable by statute" or when it constitutes "final agency action for which there is no other adequate remedy in a court." 5 U.S.C. § 704. No other statute provides for judicial review of the agency action at issue. Accordingly, the "action" challenged by Plaintiff is reviewable under the APA only if it constitutes "final agency action for which there is no other adequate remedy in court." *Id.*

"To be 'final,' an agency action 'must mark the consummation of the agency's decisionmaking process — it must not be of a merely tentative or interlocutory nature.'" *Hells Canyon Pres. Council v. U.S. Forest Serv.*, 593 F.3d 923, 930 (9th Cir. 2010) (quoting *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997)). The agency action must also be one "by which rights or obligations have been determined, or from which legal consequences will flow." *Hells Canyon*, 593 F.3d at 930 (quoting *Bennett*, 520 U.S. at 178).

In this case, Federal Defendants have not made the decision challenged in Plaintiff's Amended Complaint. Plaintiff alleges that the BIA approved "the closure and abandonment of the two existing irrigation wells and construction of a new irrigation well," and that this decision "constitutes 'final agency action' under the APA." Am.

1066, 1089 (citing *Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1179 (9th Cir. 2004)). Nor do the jurisdictional statutes cited provide an independent waiver of sovereign immunity. *Pit River Home and Agr. Co-op. Ass'n v. U.S.*, 30 F.3d 1088, 1098, n. 5 (9th Cir. 1994) (28 U.S.C. §§ 1331, 1361); *Brownell v. Ketcham Wire & Mfg. Co.*, 211 F.2d 121, 128 (9th Cir. 1954) (28 U.S.C. §§ 2201-02).

Compl. ¶ 11. But the Project has made no such decision. Florence Copper built and operates a high-capacity irrigation well on its own land without the Project's approval. Declaration of Clarence Begay ¶¶ 9–10, attached as Ex. A.[4] This well is not owned, operated, or registered by BIA. *Id.* No BIA funds were used to install the well. *Id.* Florence Copper's well is not located on Project Land. *Id.* ¶ 10.

While Florence Copper has approached the Project about replacing two Project Wells with one or more new wells developed by Florence Copper at no cost to the Project, it has not made a formal proposal and the Project has not accepted any such proposal. *Id.* ¶¶ 5–7. Florence Copper approached the Project as early as 1997 about this proposal, and it is Federal Defendants' understanding from those discussions that Florence Copper's intent is to have the Project close the two Project Wells in exchange for Florence Copper providing a replacement amount of water. *Id.* No formal well exchange proposal has been made to the Project, however, and it has made no decision on the matter. *Id.* ¶ 4. Thus far, Florence Copper's well has not produced sufficient water to replace the water produced from Project Wells 9 and 10-B, and Florence Copper has not offered to transfer the well to the Project as a high-volume replacement well or otherwise. *Id.* ¶¶ 6–7.

Nor has the Project stopped using its Wells, as Plaintiff alleges. *Id.* ¶¶ 8, 9. Well 10-B is fully functional, and the Project did not agree to stop using this well. *Id.* ¶ 9. Occasionally, since 2017, this Well has not been not in use because it was not needed for water deliveries, was offline because it needed repairs, or was temporarily not in use so that Florence Copper could run tests on their operation. *Id.* The Project has continued to use Well 10-B at other times, however. *Id.* The Project temporarily stopped using Well

---

[4] The Court may consider this declaration because it need not assume the truthfulness of Plaintiff's allegations where, as here, Federal Defendants have made a factual attack on jurisdiction. *See, e.g., Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). Because there has been no final agency action taken, the declaration is necessary to explain the lack of agency action. The declaration is submitted only for the purposes of determining jurisdictional issues with regard to this Motion to Dismiss.

9 in 2017 because it needed inspection and repair. *Id.* The Project is in the process of assessing options for repair, including potentially drilling the Well deeper. *Id.*

Notably, Plaintiff's Amended Complaint fails to identify any actual decision document. Instead, Plaintiff asserts that the Project did not make its decision public and held no public comment or hearing. Am. Compl. ¶ 49. It also asserts that "BIA did not execute any formal agreement regarding the well replacement decision and did not conduct any sort of administrative or regulatory approval or permit process with regard to the decision." *Id.* ¶ 51. Plaintiff is correct, but not because Federal Defendants failed to comply with legally required procedures. Rather, no documentation exists because Federal Defendants have not made the alleged decision. Rather than proving Plaintiff's case, the lack of documentation is evidence that no decision was made.

It is Plaintiff's burden to identify a specific final agency action that it challenges. *Defs. of Wildlife v. Tuggle*, 607 F. Supp. 2d 1095, 1099 (D. Ariz. 2009). Because no such action exists, this Court lacks jurisdiction under the APA, and Plaintiff's claims must be dismissed. *See ONRC Action v. Bureau of Land Mgmt.*, 150 F.3d 1132, 1137 (9th Cir. 1998) (finding that the plaintiff's claims failed "because ONRC cannot point to a deliberate decision by BLM to act or not to take action").

B. Plaintiff has not alleged a failure to act claim under the APA because it fails to identify a discrete agency action Federal Defendants are required to take.

To the extent that Plaintiff alleges its claim falls under 5 U.S.C. § 706(1) for "agency action unlawfully withheld or unreasonably delayed," the alleged inaction in this case is not reviewable because Federal Defendants have not withheld a discrete action they were required to take. As such, the APA does not provide this Court with jurisdiction.

The APA defines "agency action" to include failure to act, and thus allows for review of inaction under § 706(1). This section, however, does not allow for review of *any* failure to act. Rather, a "claim under § 706(1) can proceed only where a plaintiff asserts that an agency failed to take a *discrete* agency action that it is *required to take*." *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 64 (2004) ("*SUWA*"); *Defs. of Wildlife v. Tuggle*, 607 F. Supp. 2d 1095, 1099 (D. Ariz. 2009). To satisfy that standard, a plaintiff

must identify one of the discrete agency actions in 5 U.S.C. § 551(13), and demonstrate that the action in question is one that is legally required. *See SUWA*, 542 U.S. at 61–64.

Here, Plaintiff has failed to identify a discrete agency action that Federal Defendants were *required* to take. To the extent that Plaintiff alleges that the failure to undertake NEPA review is agency action unlawfully withheld, *see* Am. Compl. ¶ 65, that argument fails because the Project has not issued a decision to which NEPA obligations attach. NEPA only applies to "major federal actions." *See Upper Snake River Chapter of Trout Unltd. v. Hodel*, 921 F.2d 232, 235 (9th Cir. 1990); *Ctr. for Biological Diversity v. Salazar*, 791 F. Supp. 2d 687, 697 (D. Ariz. 2011). Here, Federal Defendants have not taken any action, and thus NEPA does not apply.

In addition, the NEPA process is inherently discretionary and, thus, cannot be mandated under § 706(1). Section 706(1) grants judicial review only if a federal agency has a "ministerial or non-discretionary" duty amounting to "a specific, unequivocal command." *SUWA*, 542 U.S. at 63–64. But NEPA gives agencies discretion in determining what kind of environmental review and documentation is required. As Plaintiff acknowledges, if there is an associated major federal action (which is not the case here), Federal Defendants could have undertaken different types of environmental review: an Environmental Impact Statement, an Environmental Assessment, or it could determine that a categorical exclusion applied. Am. Compl. ¶¶ 62–65. The agency also has discretion in its determinations on the environmental impact of proposed project because in NEPA cases, the agency's conduct is reviewed under the arbitrary and capricious standard, and the court may not substitute its judgment for that of the agency. *See Sw. Ctr. for Biological Diversity v. Glickman*, 932 F. Supp. 1189, 1193 (D. Ariz. 1996), *aff'd sub nom. Sw. Ctr. for Biological Diversity v. U.S. Forest Serv.*, 100 F.3d 1443 (9th Cir. 1996) (citing *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 378, (1989)). Accordingly, NEPA is not a discrete agency action that can be compelled by this Court.

If Plaintiff instead is arguing that the BIA is required to make a formal decision on the well replacement, that argument also fails because Plaintiff has not identified such a

requirement in any statute or regulation. Consequently, there is no "discrete agency action" that the agency is required to take that this Court could compel.

And, finally, should Plaintiff argue that the Project has an affirmative duty to prevent Florence Copper from constructing or operating its well, or allowing water from that well to flow into the Project, no such duty exists. Agencies have broad prosecutorial discretion that cannot be compelled through mandamus or a § 706(1) action. *See, e.g., Heckler v. Chaney*, 470 U.S. 821, 838 (1985) (holding that "agency refusals to institute investigative or enforcement proceedings" are committed to agency discretion).

Accordingly, Plaintiff has not pled a valid "failure to act" claim under § 706(1). The APA therefore does not waive the United States' sovereign immunity and this Court lacks jurisdiction over Plaintiff's claims.

C. Plaintiff lacks standing to bring its claims.

For the same reasons it failed to identify a final agency action, Plaintiff lacks standing to bring its claims.

> [T]o satisfy Article III's standing requirements, a plaintiff must show (1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 180-81 (2000).

Because the Project has not made a decision to replace its Wells with Florence Copper's new well, Plaintiff has not been injured by any action by the Federal Defendants. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560, 575 (1992) (holding that to satisfy Article III's standing requirements, a plaintiff "must show," *inter alia*, it has suffered an "injury in fact" that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical (citation omitted)). It is insufficient for a plaintiff to allege that there is a "realistic threat" that it will be harmed in the "reasonably near future." *Summers v. Earth Island Inst.*, 555 U.S. 488, 500 (quoting from dissent).

Similarly, any injury Plaintiff would suffer is not traceable to action of Federal Defendants. As demonstrated above, the Project did not install the new well, and Florence Copper did not install the new well under any approved agreement with the Project. Plaintiff also asserts in its Complaint that it will be injured by the increased "risk that current and proposed copper mining will contaminate the groundwater aquifer." Compl. ¶ 6. The Project is not engaging in copper mining and did not permit the copper mining. Plaintiff's Complaint is an attempt to challenge Florence Copper's copper mining, but any injury from the mining itself is not attributable to Federal Defendants' conduct. Plaintiff lacks standing to bring its claims against Federal Defendants here.

Finally, this Court cannot redress Plaintiff's alleged injury. Any Order this Court could enter against Federal Defendants would not prevent Florence Copper from continuing to pump water from the well. Florence Copper is not a party to this case and any Court order therefore could not require Florence Copper to take action. *See Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 110 (1969) ("It is elementary that one is not bound by a judgment in personam resulting from litigation in which he is not designated as a party or to which he has not been made a party by service of process."); *Greater Yellowstone Coal. v. Kimbell*, No. 06-CV-37, 2007 WL 9709798, at *14 (D. Wyo. Aug. 24, 2007), *aff'd in part, vacated in part sub nom. Greater Yellowstone Coal. v. Tidwell*, 572 F.3d 1115 (10th Cir. 2009) (noting cases illustrating principle that "when a court does not have the power to compel the agency action, a claim is not redressable"). Because this Court could not order Florence Copper to take action and Federal Defendants have not taken any action that can be remedied, Plaintiff's claims are not redressable.

Plaintiff has not demonstrated any of the elements of standing. Its claims, therefore, should be dismissed.

V. CONCLUSION

In conclusion, Federal Defendants did not permit Florence Copper's well, nor have they made a final decision to exchange the water from this well for water produced

by any Project Wells. Accordingly, Federal Defendants have not taken any final agency action subject to review under the APA. Nor has Plaintiff identified a discrete agency action that the agency is required to take under the APA. For these reasons, Plaintiff has failed to demonstrate that this Court has jurisdiction over its Complaint.

In addition, Plaintiff lacks standing to bring its claims. Plaintiff simply cannot show that it has been injured, that any injury is traceable to Federal Defendants' action, or that this Court could redress its injury.

For the foregoing reasons, Federal Defendants respectfully request that this Court dismiss Plaintiff's Amended Complaint.

Respectfully submitted this 15th day of October, 2019,

JEAN E. WILLIAMS
Deputy Assistant Attorney General

/s/ Devon Lehman McCune
DEVON LEHMAN McCUNE
Senior Attorney
U.S. Department of Justice
Environment & Natural Resources Division
Natural Resources Section
999 18th St., South Terrace, Suite 370
Denver, CO 80202
(303) 844-1487 (tel.)
(303) 844-1350 (fax)
Devon.McCune@usdoj.gov

Sonia Overholser
Office of the Solicitor
United States Department of the Interior